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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 61/153.

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 61/153, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

On the basis of his fact-finding missions, the Special Rapporteur draws the attention of the General Assembly to observations in relation to the role of forensic expertise in combating impunity. Notwithstanding binding obligations to fight impunity under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, authorities are reluctant to carry out criminal investigations and prosecutions into torture allegations, with the result that impunity is allowed to continue unchecked. A major obstacle is the lack of independent, thorough and comprehensive investigations, including effective documentation of the evidence of torture. In this regard forensic science is indispensable in correlating medical findings with a victim's allegations. The Special Rapporteur emphasizes that effective documentation, in accordance with the *Istanbul Protocol*, is a key tool for Governments to combat impunity for torture.

In section IV, the Special Rapporteur stresses that avoiding depriving people of their liberty is a very effective means of preventing torture and ill-treatment. He notes that key factors contributing to serious overcrowding of detention centres and prisons and inhuman conditions of detention in many countries are the almost automatic recourse to pretrial detention of criminal suspects and the lack of efficient criminal justice systems, with the effect that many persons suspected of minor offences spend several years in pretrial detention. Also, at the sentencing stage many criminal laws provide almost exclusively for prison sentences and neglect alternative measures of punishment. The Special Rapporteur encourages States to use non-custodial measures at the pretrial, trial and post-sentencing stages as widely as possible, in order to avoid overcrowding and to minimize the risk of torture and ill-treatment.

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I. Introduction

1. The present report is the ninth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to General Assembly resolution 61/153 (para. 29). It is the third report submitted by the present mandate holder, Manfred Nowak. This report includes issues of special concern to the Special Rapporteur, in particular overall trends and developments with respect to issues falling within his mandate.

2. The Special Rapporteur draws attention to his main report to the Human Rights Council (A/HRC/4/33 and Add.1-3). There, he discusses the obligation of States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to establish universal jurisdiction. He notes that, with few exceptions, States remain reluctant to make use of their rights and obligations to exercise universal jurisdiction. The Special Rapporteur discusses recent practice and the developments related to the case of the former dictator of Chad, Hissène Habré. Given that impunity is one of the main reasons for the widespread practice of torture in all regions of the world, he calls upon States to exercise universal jurisdiction to fight impunity and deny torturers any safe haven in the world. He further discusses the importance of cooperation between the Special Rapporteur and regional mechanisms established to combat torture. In the final section, he discusses the right of victims of torture to a remedy and reparation.

3. Document A/HRC/4/33/Add.1 covered the period 16 December 2005 to 15 December 2006 and contained allegations of individual cases of torture or general references to the phenomenon of torture, urgent appeals on behalf of individuals who might be at risk of torture or other forms of ill-treatment, as well as responses by Governments. The Special Rapporteur continues to observe that the majority of communications are not responded to by Governments.

4. Document A/HRC/4/33/Add.2 contained information on the state of follow-up to the recommendations resulting from previous country visits. The Governments of Kenya, Pakistan and Mongolia have never provided any follow-up information since the visits were carried out. The Special Rapporteur is, however, pleased to note that on 27 March 2007, during the interactive dialogue at the fourth session of the Council, representatives of the Government of Kenya informed him of a number of developments in Kenya, and he looks forward to receiving a detailed response in writing. He further appreciates follow-up information provided orally by the Governments of Brazil, Cameroon, Chile, Colombia, Georgia, Nepal and Uzbekistan.

5. Document A/HRC/33/Add.3 contains the report on the country visit to Jordan.

II. Activities related to the mandate

6. The Special Rapporteur draws the attention of the General Assembly to the activities he has carried out pursuant to his mandate since the submission of his report to the Human Rights Council described below.

Communications concerning human rights violations

7. From 16 December 2005 to 26 July 2007, the Special Rapporteur sent 51 letters of allegations of torture to 35 Governments, and 127 urgent appeals on behalf

of persons who might be at risk of torture or other forms of ill-treatment to 50 Governments.

Country visits

8. With respect to fact-finding missions, the Special Rapporteur undertook a visit to Nigeria from 4 to 10 March 2007. The visit included stops in Abuja, Lagos, Port Harcourt and Kaduna. He expresses his appreciation to the Government for the cooperation it extended to him. The Special Rapporteur welcomes Nigeria's commitment to promoting respect for human rights, as demonstrated by, among other things, its record of cooperation with international human rights mechanisms and organizations. He appreciates the challenges the State faces given the sheer size and diversity of the population, including ethnolinguistic and religious groups, the plurality of legal systems, the nature of the federal structure, the high level of crime, widespread poverty (despite the potential enormous wealth from oil revenues) and the conflict in the Niger Delta. On the basis of an analysis of the legal system, visits to detention facilities, interviews with detainees, the support of forensic medical evidence and interviews with government officials, lawyers and representatives of non-governmental organizations (NGOs), the Special Rapporteur concluded that torture and ill-treatment is widespread in police custody and is particularly systemic in the Criminal Investigation Departments. The conditions of detention in police cells visited were appalling. All the prisons visited were characterized by severe overcrowding, housing an inmate population that is typically double or triple the actual capacity of the facility. The vast majority of the prison population is awaiting trial (i.e. in pretrial detention), or held without charge for lengthy periods of as long as 10 years. However, female prisoners are provided with considerably better facilities. The findings are not new as many credible human rights organizations, as well as United Nations human rights mechanisms, have documented the use of torture and concluded that it is widespread in the country, and that the conditions of detention are unacceptable. Nigerians themselves have exhaustively identified the nature and scale of these problems. Indeed, in August 2005, President Obasanjo acknowledged the severity of the problem of torture in the country. Accordingly, the Special Rapporteur recommended a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

9. The Special Rapporteur undertook a visit to Togo from 11 to 17 April 2007. He expresses his appreciation to the Government for the full cooperation it extended to him. Noting the overall commitment by the current Government to combat torture and the considerable improvements since 2005 in this regard in most of the police commissariats and gendarmerie posts that he visited, the Special Rapporteur found evidence of ill-treatment by law enforcement officials, most of which was inflicted during interrogation for the purpose of obtaining a confession. He also heard allegations by detainees and found evidence of beatings by prison guards and other prisoners as a means of punishment. He is very concerned that children are at high risk of corporal punishment and ill-treatment in situations where they are deprived of their liberty. The Special Rapporteur is of the opinion that conditions in police and gendarmerie custody, as well as in most prisons, amount to inhuman treatment. In particular, he is concerned about the severe overcrowding in most prisons, the deplorable sanitary situation, the quantity and quality of food, as well as the restricted access to medical services. The Special Rapporteur identified the

following underlying causes: almost total impunity, resulting, inter alia, from the absence in Togolese law of an explicit prohibition of torture; deficiencies of the criminal justice system; lack of safeguards against torture; an absence of independent monitoring mechanisms; the involvement of the military in law enforcement activities; the lack of sufficient resources; and corruption. The Special Rapporteur accordingly recommended to the Government a number of measures to prevent and combat torture and ill-treatment.

10. On the question of pending visits, for the remainder of 2007, a visit to Sri Lanka (originally scheduled for January 2007) and one to Indonesia are expected to take place in October and November 2007, respectively. The Special Rapporteur is pleased to report that he has accepted an invitation from the Government of Iraq to visit the country in early 2008. Following a meeting with the delegation of the Government of Equatorial Guinea to the fifth session of the Human Rights Council, the Special Rapporteur accepted an oral invitation to visit the country in January 2008.

11. In May 2007, the Special Rapporteur renewed requests for invitations from the following States: Algeria (request first made in 1997); Afghanistan (2005); Belarus (2005); Bolivia (2005); Côte d'Ivoire (2005); Egypt (1996); Eritrea (2005); Ethiopia (2005); Fiji (2006); the Gambia (2006); India (1993); Iran (Islamic Republic of) (2005); Israel (2002); Liberia (2006); Libyan Arab Jamahiriya (2005); Papua New Guinea (2006); Saudi Arabia (2005); Syrian Arab Republic (2005); Tunisia (1998); Turkmenistan (2003); Uzbekistan (2006); Yemen (2005); and Zimbabwe (2005). He regrets that some of these requests are of long-standing.

Darfur

12. In accordance with Human Rights Council resolution 4/8 of 30 March 2007, the Special Rapporteur participated in two meetings of the group composed of seven special procedures mandate holders held from 24 to 27 April and on 24 May 2007. The group was requested "to work with the Government of the Sudan ... to ensure the effective follow-up and to foster the implementation of resolutions and recommendations on Darfur, as adopted by the Human Rights Council, the Commission on Human Rights and other United Nations human rights institutions, as well as to promote the implementation of relevant recommendations of other United Nations human rights mechanisms". The process resulted in a preliminary report on the situation of human rights in Darfur (A/HRC/5/6) which was submitted to the Council at its fifth session. A further update will be submitted to the sixth session of the Council in accordance with resolution OM/1/3 of 20 June 2007.

Press conferences and statements

13. On 27 March 2007, following his appearance before the Human Rights Council, the Special Rapporteur held a press conference in Geneva. The questions raised by the journalists included the challenges to the prohibition of torture in the context of fighting terrorism, the issue of rehabilitation of and reparation to torture victims and follow-up to past country visits.

14. On 10 May 2007, the Special Rapporteur, together with other special procedure mandate holders, called on the Government of Myanmar to release Daw Aung San Suu Kyi and to free all the remaining political prisoners.

15. On 26 June 2007, on the occasion of the International Day in Support of Victims of Torture, the Special Rapporteur, together with the Committee against Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the United Nations High Commissioner for Human Rights, issued a joint statement which, inter alia, drew attention to the links between torture and the death penalty and encouraged States that continued to apply the death penalty to consider a moratorium on its use, and expressed gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture and called on all States, in particular those that had been found to be responsible for widespread or systematic practices of torture, to contribute to the Voluntary Fund as part of a universal commitment for the rehabilitation of torture victims.

16. Press releases were also issued in connection with the country visits that took place in the reporting period and with the Darfur process.

Highlights of key presentations/consultations/training

17. On 11 January 2007, the Special Rapporteur gave a lecture on the subject "Contemporary problems relating to the prohibition of torture — experiences of the Special Rapporteur on torture" at the Johann Wolfgang von Goethe University in Frankfurt, Germany.

18. On 20 March 2007, he met with the Minister of Justice of Austria, Maria Berger, to discuss provisions relating to torture in the Austrian Criminal Code.

19. On 26 and 27 March 2007, he presented his report to the Human Rights Council in Geneva and participated in the interactive dialogue held during the fourth session.

20. On 21 May 2007, he met with the President of Nigeria, Olusegun Obasanjo, at the InterAction Council of Former Heads of State and Government in Vienna to discuss follow-up to his visit to Nigeria in March 2007.

21. On 23 May 2007, he chaired a discussion that followed a lecture given by the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, entitled "Human rights in Europe: mission unaccomplished".

22. On 25 May 2007, he gave a lecture on torture at the University of Pretoria in South Africa for students participating in the African Master's Programme in human rights and democratization.

23. From 29 May to 6 June 2007, while in Washington, D.C., the Special Rapporteur met with several representatives of civil society, including Penal Reform International, Human Rights First and Human Rights Watch. On 6 June, he participated in a workshop on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

24. On 21 June 2007, the Special Rapporteur gave a presentation entitled "Economic and social root cause of torture" at a training course organized by the World Organization against Torture in Geneva.

Torture in the context of counter-terrorism measures

25. On 27 March 2007, the Special Rapporteur participated at an NGO panel in Geneva entitled "Against terrorism — for human rights".

26. On 10 May 2007, he met with representatives of the Embassy of the United States of America in Vienna to discuss the closure of the detention facilities at the Guantánamo Bay Naval Base, Cuba, and other issues of common concern.

27. On 16 May 2007, he met the President of Austria, Heinz Fischer, to discuss issues related to counter-terrorism and torture.

28. On 21 May 2007, he met with Human Rights Watch representatives in Vienna to discuss human rights challenges posed by the fight against terrorism.

29. From 29 May to 6 June 2007, while in Washington, D.C., the Special Rapporteur had a series of meetings with officials of the United States Department of State to discuss various issues, including the closure of the detention facilities at the Guantánamo Bay Naval Base and how the burden could be shared.

30. On 31 May 2007, he participated in a panel discussion entitled "Human rights and the war on terror" at American University in Washington, D.C.

31. On 14 June 2007, the Special Rapporteur trained NGO representatives participating in a workshop entitled "The war on terror" organized by Amnesty International in Vienna.

32. On 22 June 2007, he gave a speech entitled "Torture and terrorism" at the thirty-second annual meeting of Austrian international lawyers in Altaussee, Austria.

33. On 14 July 2007, he gave a speech entitled "The implementation of the EU guidelines on torture" at the Diplomatic Conference organized by the European Inter-University Centre for Human Rights and Democratisation in Venice.

Reform of the United Nations human rights machinery/coordination with United Nations agencies and regional bodies

34. On 18 January 2007 the Special Rapporteur made a presentation on the reform of the Human Rights Council at a conference of the NGOs in consultative relationship with the United Nations in Vienna.

35. From 19 to 21 January 2007, he participated in a conference entitled "Encouraging implementation of human rights standards" at Wilton Park, United Kingdom, sat on a panel which discussed the role of the special procedures and gave the closing speech, entitled "Looking at the future".

36. On 23 February 2007, he met with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Geneva during its first session to discuss issues relating to coordination, visit methodology and national preventive mechanisms. He held discussions with some of the Subcommittee's members again on 18 June 2007 in Geneva.

37. On 20 May 2007, the Special Rapporteur met with the Commissioner for Human Rights of the Council of Europe in Vienna to discuss issues of common concern.

38. On 31 May 2007, he met with the President of the Inter-American Commission on Human Rights, Florentín Melendez, in Washington D.C., to exchange experiences and deliberate on possibilities for cooperation.

39. On 13 June 2007, the Special Rapporteur held a series of meetings in The Hague with the President of the International Court of Justice, Dame Rosalyn

Higgins, the President and the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Fausto Pocar and Carla Del Ponte, and with the Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, to discuss issues of common concern.

40. On 20 June 2007, he met with staff of the Division of International Protection Services, Office of the United Nations High Commissioner for Refugees, in Geneva to discuss areas of cooperation and common concern.

41. With reference to General Assembly resolution 61/153, in which the Assembly stressed the need for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, on 29 June 2007, consultations were held with relevant departments of the United Nations Office on Drugs and Crime (UNODC) in Vienna.

III. The role of forensic expertise in combating impunity for torture

42. The Special Rapporteur has carried out fact-finding missions to eight countries since assuming the mandate in December 2004: Georgia, Mongolia, Nepal, China, Jordan, Paraguay, Nigeria and Togo. The common finding that emerged from each visit is the lack of accountability of perpetrators of torture, despite the fact that all eight are States parties to the Convention against Torture, which imposes a binding obligation to fight impunity. States are obliged to criminalize torture, as defined in article 1, by creating one or more specific offences in their domestic criminal codes punishable "by appropriate penalties which take into account their grave nature" (art. 4).

43. Although these States have a crime of torture in their domestic legislation, it is often poorly defined i.e. not in accordance with article 1, and even with ex officio powers of investigation authorities are reluctant to carry out criminal investigations into torture allegations; there is little, if any, evidence that any police official has been convicted of this offence. Instead, examples have been provided to the Special Rapporteur of administrative or disciplinary sanctions against errant officers. This is a strong indication of the unwillingness of States to fight impunity in accordance with the Convention.

44. The Special Rapporteur recalls the updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.7).[1] According to principle 1 on the general obligations of States to take effective action to combat impunity:

> "Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive

[1] The updated Set of Principles was endorsed by the Commission on Human Rights in its resolution 2005/81. See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* (E/2005/23), chap. II, sect. A.

reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations."

45. He further recalls principle 19 on the duties of States with regard to the administration of justice:

> "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished."

46. One of the major challenges in fighting impunity for torture is for the authorities to carry out effective investigations; investigations that are independent, thorough and comprehensive.[2] In particular, in cases against alleged perpetrators, it is a major challenge to obtain sufficient evidence that a person has been tortured. As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stressed in a recent update to its standards:

> "Adequately assessing allegations of ill-treatment will often be a far from straightforward matter. Certain types of ill-treatment (such as asphyxiation or electric shocks) do not leave obvious marks, or will not, if carried out with a degree of proficiency. Similarly, making persons stand, kneel or crouch in an uncomfortable position for hours on end, or depriving them of sleep, is unlikely to leave clearly identifiable traces. Even blows to the body may leave only slight physical marks, difficult to observe and quick to fade. Consequently, when allegations of such forms of ill-treatment come to the notice of prosecutorial or judicial authorities, they should be especially careful not to accord undue importance to the absence of physical marks. The same applies a fortiori when the ill-treatment alleged is predominantly of a psychological nature (sexual humiliation, threats to the life or physical integrity of the person detained and/or his family, etc.). Adequately assessing the veracity of allegations of ill-treatment may well require taking evidence from all persons concerned and arranging in good time for on-site inspections and/or specialist medical examinations."[3]

47. Forensic medicine is a "science which seeks to disclose the truth in as much as it exposes the facts concerning the circumstances of injury and death. In so doing it provides a foundation on which to build preventative policies and justice".[4] The purpose of the medical evaluation is to provide expert opinion on the degree to which medical findings correlate with the alleged victim's allegations. With this in mind, forensic expertise is an indispensable element of credible fact-finding. On his missions to Mongolia, Nepal, Jordan, Paraguay, Nigeria and Togo, the Special Rapporteur was assisted by independent medical experts qualified to document and assess injuries, in accordance with the Istanbul Protocol, the international guidelines

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[2] See in European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The CPT standards*, CPT/Inf/E (2002) 1 — Rev.2006, chap. IX — Combating Impunity.

[3] Ibid., para. 29.

[4] D. J. Pounder, "International aspects of forensic medicine", in J. Kragsstrup, J. L. Thomsen and M. Ritskes-Hoitinga (eds.), *Health Scientists at Odense University* (Odense University, Denmark: 1998).

for the assessment of persons who allege torture and ill-treatment, for investigating such cases, and for reporting the findings to appropriate investigative bodies, adopted by the Commission on Human Rights and the General Assembly.[5] The findings contained in the reports of these experts assisted the Special Rapporteur to draw his conclusions on the practice of torture in the respective countries.

48. The Special Rapporteur notes that the United Nations has remained seized of the importance of the role forensic science plays in fighting impunity since the early 1990s.[6] He recalls that the Commission on Human Rights in resolution 2005/26 recognized that forensic investigations can play an important role in combating impunity by providing the evidentiary basis on which prosecutions can successfully be brought against persons responsible for grave violations of human rights and international humanitarian law."[7]

49. The Special Rapporteur welcomes information that there is increasing and more systematic use of forensic expertise in the context of human rights fact-finding and investigative activities by the Office of the High Commissioner for Human Rights, special procedures mandates, as well as international commissions of inquiry.[8] He notes that the Subcommittee on Prevention established under the Optional Protocol to the Convention against Torture is expected to make use of such expertise for its activities.[9]

50. A general observation made on the basis of the missions carried out to date is that victims invariably are caught between requirements of the law to adduce evidence to support allegations of torture and the lack of practical possibilities to produce such evidence, especially on the part of those persons who are still being detained. For example, records of medical examinations upon arrest or transfer are often non-existent, and recourse to forensic expertise is at the discretion of the

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[5] Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) annexed to General Assembly resolution 55/89 of 4 December 2000 and Commission on Human Rights resolution 2000/43 of 20 April 2000. See *Official Records of the Economic and Social Council, 2000, Supplement No. 3* (E/2000/23), chap. II, sect. A. *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series No. 8/Rev.1 (United Nations publication, Sales No. E.04.XIV.3), 2004. See also the discussion on country visit methodology of the Special Rapporteur on the question of torture in document E/CN.4/2006/6, para. 23.

[6] Commission on Human Rights resolutions 1992/24 of 28 February 1992 (see *Official Records of the Economic and Social Council, 1992, Supplement No. 3* (E/1992/22), chap. II, sect. A; 1993/33 of 5 March 1993 (ibid., *1993, Supplement No. 3* (E/1993/23), chap. II, sect. A; 1994/31 of 4 March 1994 (ibid., *1994, Supplement No. 3* (E/1994/24), chap. II, sect. A; 1996/31 of 19 April 1996 (ibid., *1996, Supplement No. 3* (E/1996/23), chap. II, sect. A; 1998/36 of 17 April 1998 (ibid., *Supplement No. 3* (E/1998/23), chap. II, sect. A; 2000/32 of 20 April 2000 (ibid., *2000, Supplement No. 3* (E/2000/23), chap. II, sect. A; and 2003/33 of 23 April 2003 (ibid., *2003, Supplement No. 3* (E/2003/23), chap. II, sect. A.

[7] See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* (E/2005/23), chap. II, sect. A.

[8] See the updated report of the Office of the High Commissioner for Human Rights on human rights and forensic science (A/HRC/4/103), para. 28. The Office of the High Commissioner for Human Rights in Guatemala advised the Government on the elaboration of recently adopted legislation establishing the National Institute of Forensic Medicine, which is expected to play a crucial role in combating impunity of past and ongoing human rights violations; see the report of the Secretary-General on impunity (A/HRC/4/84), para. 18.

[9] Ibid.

police, prison guard, prosecutor or judge and is usually denied or simply unavailable for detainees because of lack of money or lack of independent specialists or facilities.

51. The end result is that many of the alleged victims, who are found by the Special Rapporteur to have made credible allegations of torture on the basis of evidence corroborated by forensic evaluations, are left with no recourse in having their complaints effectively investigated. Indeed, in the course of country visits, the Special Rapporteur has alerted the authorities of the need to immediately investigate and prosecute such cases and has sought information on follow-up measures taken by Governments. Likewise, in transmitting to Governments urgent appeals and allegation letters concerning alleged torture and ill-treatment, the Special Rapporteur regularly inquires into the details and results of medical examinations carried out pursuant to investigations. Regrettably, very little follow-up information in this regard is ever provided and Governments usually dismiss complaints of torture because of alleged "lack of credibility of criminals", without having made any serious attempt to investigate such complaints.

52. Effective documentation aims to bring evidence of torture and ill-treatment to light so that perpetrators may be held accountable. In the view of the Special Rapporteur, lack of investigation together with impunity is the principal cause of the perpetuation of torture and ill-treatment. The inability to tackle it effectively will continue to encourage its practice. If States are serious about combating impunity for torture, they will improve the quality of their criminal investigations through effective documentation of evidence of torture.

53. **In line with Commission on Human Rights resolution 2005/26, the Special Rapporteur encourages Governments to establish thorough, prompt and impartial investigation and documentation procedures as reflected in the Istanbul Protocol. In particular, he recommends the following:**

(a) **Complaints about torture should be recorded in writing, and a forensic medical examination (including, if appropriate, by a forensic psychiatrist) should be immediately ordered. Such an approach should be followed whether or not the person concerned bears visible external injuries. Even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment;**

(b) **Access to forensic expertise should not be subject to prior authorization by an investigating authority;**

(c) **Forensic medical services should be under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system;**

(d) **Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes;**

(e) **An independent forensic expert should be part of any credible fact-finding or prevention mechanism.**

54. **In addition, the Special Rapporteur encourages the Office of the High Commissioner for Human Rights, as well as other relevant international and non-governmental organizations and Governments with established forensic**

expertise, to promote forensic capacity-building, including training where necessary, particularly in countries without sufficient expertise in forensic science and related fields.

IV. Avoiding the deprivation of liberty as a means of preventing torture

55. The Special Rapporteur notes from his country visit experiences that one of the most commonly observed obstacles to the respect of human dignity and to the prohibition of torture and other forms of ill-treatment is overcrowding in places of detention. Overcrowding strains existing infrastructure, staffing, services and resources, which in turn leads to a decline in the standards of detention: failure to separate vulnerable groups, such as children, women, and ill prisoners, due to a lack of space; and insufficient beds, food, water, washing facilities, ventilation, sanitary conditions, recreational, educational or vocational opportunities, staffing to ensure discipline and security of the detainees, medicines, level of health care, etc. In this context, the Special Rapporteur recalls the jurisprudence of several international and regional human rights mechanisms, which has found that poor conditions of detention can amount to inhuman and degrading treatment.[10]

56. It is often explained by the responsible authorities that minimum standards of detention are not fulfilled because of a lack of financial resources for, among other things, refurbishment of detention facilities, purchase of basic supplies, provision of food and medical treatment and recruitment of staff, let alone for payment of staff salaries.

57. The Special Rapporteur recalls that, as soon as a State deprives someone of his or her liberty, it has the obligation to ensure full respect of all other human rights of that individual, and he refers to the detailed discussion on the guarantees for individuals deprived of their liberty contained in an earlier report (see E/CN.4/2004/56, paras. 27-49).

58. The Special Rapporteur notes that key factors to overcrowding are, generally, the almost automatic recourse to pretrial detention of suspects, even for non-violent offenders or for minor offences, despite the availability of non-custodial measures such as bail, house arrest, confiscation of travel document and recognizance; moreover, in many countries criminal laws focus on lengthy prison terms as the only

[10] See, for example, the following decisions of the Human Rights Committee: *Deidrick v. Jamaica*, communication No. 619/1995, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40* (A/53/40), vol. II, annex XI, sect. L; *Brown v. Jamaica*, communication No. 775/1997, ibid., *Fifty-fourth Session, Supplement No. 40* (A/54/40), vol. II, annex XI, sect. GG; *Larrosa Bequio v. Uruguay*, communication No. 88/1981, ibid., *Thirty-eighth Session, Supplement No. 40* (A/38/40), annex XVI. See also the following concluding observations and discussions of the Committee against Torture: *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44* (A/51/44), para. 63 (Hong Kong); ibid., *Fifty-sixth Session, Supplement No. 44* (A/56/44) (Bolivia, Brazil, Costa Rica, Kazakhstan); ibid., *Fifty-ninth Session, Supplement No. 44* (A/59/44) (Cameroon); ibid., *Sixtieth Session, Supplement No. 44* (A/60/44) (Greece); CAT/C/NPL/CO/2 (Nepal); CAT/C/SR.264 (Russian Federation); CAT/C/SR.418 (Paraguay); CAT/C/SR.471 (Brazil). See further the following judgements of the European Court of Human Rights: *Valasinas v. Lithuania* (2001), *Kalashnikov v. Russia* (2002), *Mayzit v. Russia* (2005), *Novose'ov v. Russia* (2005), *Khudoyorov v. Russia* (2005), *Ostrovar v. Moldova* (2005).

punishment, even for relatively minor crimes, and do not provide for alternative, often more effective measures such as verbal sanctions, including admonition, reprimand and warning, conditional discharge, fines, restitution or compensation to the victim, suspended or deferred sentence, probation, community service, or house arrest.[11]

59. The need for comprehensive reform of the criminal justice system in order to offer a wide range of measures avoiding the deprivation of liberty is therefore a common conclusion arrived at in the Special Rapporteur's country reports. In his opinion, avoiding depriving a person of his/her liberty is one of the most effective safeguards against torture and ill-treatment.

60. Criminal justice reform should therefore seek to avoid the deprivation of liberty at all stages. It is crucial that minor cases, which otherwise use up many of the resources needed to process cases of grave crime, are dealt with outside the criminal law system. In this context decriminalization and diversion can significantly contribute to relieving the criminal justice system. Moreover, with regard to those cases that need to be dealt with under criminal law, measures not involving detention at the pretrial stage and non-custodial sentences after trial should be used as much as possible. In order for such a reform of the criminal law system to be effective, each institution involved needs to make its contribution, including the police, the judiciary, the legal profession, the prosecution services and the penitentiary system. To reform all these stages is a complex undertaking that should be guided by applicable international standards and norms.

61. The Special Rapporteur and his predecessors have consistently found that minors constitute one of the most vulnerable groups of detainees.[12] In many instances the authorities fail to separate them from the adult prison population, which puts them in danger of abuse, including sexual abuse. Also, corporal punishment of minors in detention situations remains a problem in many countries. At the same time, detained minors often come from poor and disadvantaged backgrounds and therefore their access to essential safeguards against torture or ill-treatment, such as the presence of their parents or access to legal aid, is restricted.[13]

62. The Special Rapporteur therefore considers that the avoidance of deprivation of liberty of minors is crucial in preventing torture and ill-treatment. He emphasizes, in accordance with the Convention on the Rights of the Child and other applicable international standards, that the deprivation of liberty of children should be used only as a last resort and for the shortest appropriate period of time[14] and draws

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[11] See also: United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by the General Assembly in resolution 45/110 of 14 December 1990.

[12] See also A/55/290, paras. 10-15; E/CN.4/1996/35, paras. 9-17.

[13] In spite of the detailed guarantees contained in articles 37 and 40 of the Convention on the Rights of the Child.

[14] Article 37 (b) of the Convention on the Rights of the Child states: "... The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". See also the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), General Assembly resolution 40/33 of 29 November 1985; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/133 of 14 December 1990; and the Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council resolution 1997/30 of 21 July 1997.

attention to article 40, paragraph 4, of the Convention, which specifically refers to alternatives to detention for children:

> "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."[15]

63. The Special Rapporteur welcomes several recent publications of UNODC, which deal with alternatives to detention: *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*,[16] *Handbook on Restorative Justice Programmes*,[17] and *Alternatives to Incarceration*.[18] These set out the alternatives to detention which are available at the various stages of the criminal process and provide guidance and information on best practices with regard to many of the related recommendations of the Special Rapporteur contained in his country visit reports.

64. In the wider context of criminal law reform the Special Rapporteur is pleased to refer to recent efforts by UNODC to produce a "Criminal Justice Assessment Toolkit",[19] which aims at accompanying the reform process by pointing to relevant standards and providing examples of best practices in areas such as policing, access to justice, and custodial and non-custodial measures; several cross-cutting issues (juvenile justice, victims and witnesses, international cooperation) are also addressed.

65. The Special Rapporteur also draws attention to the Interagency Panel on Juvenile Justice, which coordinates activities of relevant United Nations agencies and non-governmental organizations active in the area of juvenile justice and

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[15] See Guidelines for Action on Children in the Criminal Justice System, ibid., para. 15: A review of existing procedures should be undertaken and, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. Appropriate steps should be taken to make available throughout the State a broad range of alternative and educative measures at the pre-arrest, pretrial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders. Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, particularly processes involving victims. In the various measures to be adopted, the family should be involved, to the extent that it operates in favour of the good of the child offender ... See also paragraph 25 of general comment No. 10 (2007) of the Committee on the Rights of the Child, concerning children's rights in juvenile justice, para. 25: "... the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders ... In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety and has proven to be more cost-effective". In HRI/GEN/Rev.8/Add.1.

[16] United Nations publication, Sales No. E.07.XI.2. The UNODC publications cited in the present report are available on its website (www.unodc.org).

[17] United Nations publication, Sales No. E.06.IV.15.

[18] United Nations Office on Drugs and Crime, Custodial and Non-Custodial Measures No. 3, United Nations, New York, 2006

[19] Available at: http://www.unodc.org/unodc/criminal_justice_assessment_toolkit.html.

provides advice and support to States upon request.[20] Finally, he refers to the UNODC publication *Juvenile Justice*,[21] part of the Criminal Justice Assessment Toolkit, which contains juvenile justice indicators[22] and information on best practices in the area of diversion, restorative justice, institutional treatment, etc. It also deals with vulnerable groups and provides guidance on management- and supervision-related issues.

66. In accordance with these handbooks, toolkits and relevant norms and standards of the United Nations, including rules 1 (5) and 5 of the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), the Special Rapporteur encourages States to make the broadest possible use of the wide range of non-custodial measures available, which can be imposed at all stages of the administration of criminal justice: pretrial, trial, or execution of sentence. The human right to personal liberty is one of the most precious assets of human beings and a precondition for living a meaningful life. Human beings should be deprived of this asset only if absolutely necessary for the purpose of crime prevention or similarly important public interests. At the same time, avoiding deprivation of liberty as far as possible is one of the most efficient means of preventing torture and ill-treatment.

[20] See http://www.juvenilejusticepanel.org/en/.

[21] United Nations Office on Drugs and Crime, Cross-Cutting Issues No. 2, United Nations, New York, 2006.

[22] Also available at: http://www.juvenilejusticepanel.org/mm/File/15JJIndicators.pdf.